

Claimant alleges his low back became symptomatic with radiating pain down both legs in August of 1997. Claimant testified the back pain increased as he was performing his regular duties as a forklift driver at work. Claimant testified, in August of 1997, because of an increase in the respondent's business, his work week increased from 40 hours per week to approximately 70 hours per week.

Claimant first sought treatment for his low-back pain on February 18, 1998, through his family physician, James A. Cheray, M.D. Dr. Cheray's medical record dated March 12, 1998, finds claimant with discomfort in the lumbosacral spine area, pain radiating down both legs, cramping discomfort, muscle atrophy, and ambulation problems because of favoring his left leg. Dr. Cheray took claimant off work and referred claimant to neurosurgeon Frank P. Holladay, M.D., for further examination and treatment recommendations.

In a report dated April 28, 1998, Dr. Holladay believes claimant's low-back condition is the result of claimant's forklift driving duties at work. Dr. Holladay opines that driving the forklift has brought on repeated episodes of lumbar strain and injury resulting in accelerated spondylosis.

The Appeals Board is mindful that the insurance carrier's claim adjustor took a statement from claimant over the telephone on March 16, 1998. The insurance adjustor testified before the Administrative Law Judge at the preliminary hearing and the transcript of the statement was introduced into evidence. Contained in that statement, claimant first described to the insurance adjustor how his low back became symptomatic as the result of the intense jarring his low back received while operating the forklift at work. Claimant then described that his low back also became symptomatic as he worked on his roof for a few days in August of 1997.

The Administrative Law Judge found it was more likely that claimant's low-back condition was caused by the operation of the forklift at work rather than the few days he worked on his roof in August 1997. The Appeals Board agrees with the Administrative Law Judge. Claimant's testimony and the medical records admitted into evidence at the preliminary hearing prove it is more likely than not that claimant's low-back condition was caused by the intense jarring that he received while driving the forklift at work.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge, Robert H. Foerschler's May 14, 1998, Preliminary Decision should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER

c: Brenden W. Webb, Overland Park, KS  
Kenneth J. Hursh, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director